

REMARKS

Responsive to the Office Action mailed 17 June 2009 and with an extension of time of ONE MONTH the present paper is timely filed on or before 17 June 2009. By the present paper, claim 17 is amended and no claims are cancelled. Claims 1 - 16 were cancelled by Preliminary Amendment. Claims 17 - 33 are under examination. Entry of the claims amendments and reconsideration of the Application are respectfully requested

The Claim Amendments:

Claim 17 is amended to correct a latent ambiguity. Applicants respectfully submit that support for the amendment is apparent.

Claim Rejections Under 35 U.S.C. § 112, paragraph first:

Claims 27, 29, and 31 were rejected under 35 U.S.C. § 112, ¶1, as allegedly lacking written description. Applicants respectfully submit that claim 27 is supported in the specification at, for example, page 4, lines 10 - 19, as well as in original claim 6, now cancelled. Applicants respectfully submit that at least the language cited to would inform the skilled artisan that Applicants were in possession of that which is now claimed. Claims 29 and 31 depend from claim 27 and, accordingly, the disputed features are likewise described in these claims.

Claims 27, 29, and 31 were rejected as allegedly non-enabled. As Applicants best understand the rejection, the Office Alleges that because the apparatus, or certain features thereof, are not disclosed, the skilled artisan would not know how to make and use the device. As discussed above, Applicants respectfully submit that the essential elements of claim 27 are described in the specification and that, armed with this disclosure and the figures, the skilled artisan could construct and use an apparatus within the scope of claim 27.

Claim Rejections Under 35 U.S.C. § 102:

Claims 17 and 25 were rejected as allegedly anticipated by Seisakusho et al., JP 63 036 783 (Seisakusho et al.) Applicants respectfully traverse.

To anticipate a claim, a prior art reference must disclose all of the elements of the claim, arranged as required by the claim. *See, e.g., Net MoneyIN Inc. V. VeriSign Inc.*, 88 USPQ2d 1751 (Fed. Cir. 2008). For apparatus claims, if the prior art reference in fact discloses elements arranged as required by the claim then clearly the disclosed device must be capable of functions in the same manner as the claimed device. Conversely, a prior art device that does not function in the same manner as the claimed device cannot be said to disclose all of the elements of the claim arranged as required by the claim. Applicants respectfully submit that a device that has a principal of operation different from that of the claimed device cannot have all elements arranged as required by the claim.

Seisakusho et al. discloses use of an elastic porous material [2] as a reaction “carrier”. All of the reaction occurs in the “carrier” hence all of the reaction mixture must somehow flow through the carrier. The device of Seisakusho et al would not function if conduit [9] passed through member [4]. Seisakusho et requires the liquid withdrawing conduit [9] on the bottom. The device of Seisakusho et al. cannot be operated like the device of Applicants claims and is based on completely different principal of operation. Seisakusho et al. cannot be said to disclose all of the elements of Applicants claim arranged as required by the claims.

Claim Rejections Under 35 U.S.C. § 103:

Claims 18 - 24, 26 - 31, and 33 were rejected as allegedly obvious over Seisakusho et al. Claims 18 - 24, 26 - 31, and 33 depend from claims that, Applicants respectfully submit, contain patentable subject matter and, accordingly, these claims likewise contain patentable subject matter. For at least this reason, Applicants

respectfully submit that the rejection is improper and should be withdrawn. But Applicants to not rest their traversal on this ground alone.

Element [4] of Seisakusho et al. is indeed moveable. But the Office has not pointed to any motivation for relocating the liquid withdrawing conduit [9] within the member [4] and, in any event, the device of Seisakusho et al. employs a different principle of operation wherefor location of conduit [9] cannot be said to be a design choice in respect of Applicant's device. For this additional reason, Applicants respectfully submit that the rejection is improper and should be withdrawn.

Claim 32 was rejected as allegedly obvious over Seisakusho et al. in view of Lin, U.S. Patent 6,017,483. Because claim 32 depends from claims that, Applicants respectfully submit, contain patentable subject matter, claims 32 likewise contains patentable subject matter. For at least this reason, Applicants respectfully submit that the rejection is improper and should be withdrawn.


REQUEST FOR EXTENSION OF TIME

Applicants respectfully request a one month extension of time for responding to the Office Action. The fee of \$130 for the extension is provided for in the charge authorization presented in the PTO Form 2038, Credit Card Payment form, provided herewith.

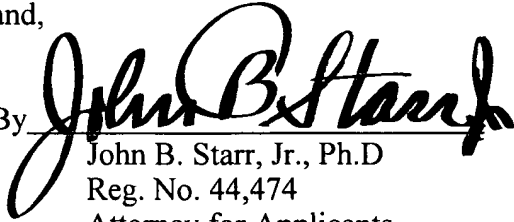
If there is any discrepancy between the fee(s) due and the fee payment authorized in the Credit Card Payment Form PTO-2038 or the Form PTO-2038 is missing or fee payment via the Form PTO-2038 cannot be processed, the USPTO is hereby authorized to charge any fee(s) or fee(s) deficiency or credit any excess payment to Deposit Account No. 10-1250.

Respectfully submitted,

JORDAN AND HAMBURG LLP

By 
C. Bruce Hamburg
Reg. No. 22,389
Attorney for Applicants

and,

By 
John B. Starr, Jr., Ph.D
Reg. No. 44,474
Attorney for Applicants

Jordan and Hamburg LLP
122 East 42nd Street
New York, New York 10168
(212) 986-2340